

APPENDIX 15

State Hazard Mitigation Capability Assessment

Following is detailed information from the State Hazard Mitigation Plan regarding mitigation in Kentucky.

State Regulatory Analysis Summary

Kentucky Pre- and Post- Disaster Legislation

The Kentucky General Assembly realizes the Commonwealth is subject at all times to disaster or emergency occurrences which can range from crises affecting limited areas to widespread catastrophic events, and that response to these occurrences is a fundamental responsibility of elected government. Therefore, the General Assembly established a statewide comprehensive emergency management program, and through it an integrated emergency management system, in order to provide for adequate assessment and mitigation of, preparation for, response to, and recovery from, the threats to public safety and the harmful effects or destruction resulting from all major hazards.

The Kentucky Revised Statutes (KRS) were enacted in 1942 to eliminate provisions no longer in force or effect and to restate and compile the remainder in an understandable form. Involved was a complete reclassification – bringing together those laws and parts of laws which, because of similarity of subject matter, properly belonged together and an arrangement of the laws within each class in a logical order.

In July of 1998, KRS 39A.010 established the Kentucky Division of Emergency Management (KyEM) and local emergency management agencies, replacing the Kentucky Disaster and Emergency Services. In addition, the Governor, the county judges/executives, the mayors of the cities and urban-county governments, and the chief executive of other local governments were conferred the emergency powers provided in KRS Chapters 39A to 39F. Also, provisions were established for mutual aid among the cities, counties, and urban-county or charter county governments of the Commonwealth, with other states, and with the federal government with respect to the performance of disaster and emergency preparedness, response, recovery, and mitigation functions. Finally, a statewide comprehensive emergency management program and integrated emergency management system were established.

Following is an overview of the major regulations and landuse for Kentucky:

1. **Floodplain ordinance**

All jurisdictions participating in the National Flood Insurance Program (NFIP) are required to have a floodplain ordinance. These ordinances are enforced locally and in many cases, local requirements are identical to state requirements.

All jurisdictions are encouraged to participate in the National Flood Insurance Program so that flood insurance will be available, there will be active Floodplain Management, and FEMA will provide flood hazard mapping for each community.

2. **The Natural Resources and Environmental Protection Cabinet, Division of Water**, has major responsibility among state agencies for floodplain management in Kentucky. Within the Division of Water, the Water Resources Branch, Floodplain Management Section is responsible for the following:

- Analyze and issue permits for proposed construction within the 100-year floodplain.
- Issue permits for construction, reconstruction, and repair of dams.
- Provide liaison for the National Flood Insurance Program.
- Administer the state-owned Dam Repair Program.
- Coordinate and provide technical assistance for floodplain management activities within the Commonwealth.
- Construction in a floodplain without a permit violates KRS 151 and becomes the responsibility of the Dam Safety and Floodplain Compliance Section of the Division of Water.
- All jurisdictions are encouraged to require local permits, in addition to required state permits, for development in floodways and floodplains.

3. **Building Codes**

- The State of Kentucky has established building codes.
- All jurisdictions are encouraged to comply with the state building code. It must be enforced at the local level by a building, electrical, and/or plumbing inspector or as a function of Planning and Zoning.
- The KY state building code can be found at the following web site:
<http://hbc.ppr.ky.gov/BCE.htm>
- All single-family structures are inspected locally for electrical and plumbing compliance.

4. **Planning and Zoning (Land Use)**

- Updates are required every five years to each county's comprehensive land use plan.
- Generally, planning and zoning functions work to create partnerships with elected officials, public agencies, the development community, the business community, and citizens to contribute toward shaping community development.

Zoning works for, and with, the community to project its needs and to create a vision for the future that will enhance the quality of life and ensure orderly development. It provides advice and technical expertise for understanding and dealing with key community issues and priorities. It focuses efforts on a long-term commitment to economic vitality, environmental integrity, and development design quality. It is a customer-service driven, problem solving, and facilitative function while performing long-range planning, short-term planning, building plan review, permitting, and inspections.

5. KRS There are numerous sections in KRS that address the issues of emergency systems, hazard safety, and hazard mitigation as following:

Title V – Military Affairs

- Chapter 36 – Department of Military Affairs
 - 36.010 – Department of Military Affairs attached to Office of Governor –Functions – Organization
 - 36.235 – Unit of Civil Air Patrol – Functions of unit
 - 36.255 – Kentucky Community Crisis Response Board – Members – Meetings
- Chapter 37 – Active Militia
 - 37.240 – Active service – How and when ordered into – Direction – Powers
- Chapter 38 – National Guard
 - 38.030 – Ordering troops into state active duty – Nontactical direction by local civil officers
- Chapter 39 – Disaster and Emergency Services Management
- Chapter 39A – Statewide Emergency Management Programs
 - 39A.010 – Legislative intent – Necessity
 - 39A.015 – Definitions and chapter provisions applicable to KRS Chapters 39B to 39F
 - 39A.020 – Definitions for KRS Chapters 39A to 39F
 - 39A.030 – Rationale and purpose of program – Division of Emergency Management
 - 39A.040 – Administrative bodies attached to division
 - 39A.050 – Responsibility of division for coordinating disaster and emergency services – Powers, authorities, and duties
 - 39A.060 – Nature and scope of comprehensive program – Director under direction of adjutant general
 - 39A.070 – Powers, responsibilities, and duties of director
 - 39A.080 – Seals and markings of Division of Emergency Management to be affixed on vehicles used and operated by division
 - 39A.090 – Executive orders

- 39A.100 – Emergency powers of Governor and local chief executive officers
- 39A.110 – Compensation for property taken for temporary use – Notice to owner of property where title taken
- 39A.120 – Procedure when owner refuses to accept compensation fixed by Governor
- 39A.130 – Appeal from award of Board of Claims
- 39A.140 – Procedure for payment of compensation
- 39A.150 – Traffic control plans – Executive orders
- 39A.160 – Witnesses – Production of records and documents
- 39A.170 – Lease or loan of real or personal property of state government – Disaster and emergency response activities of state employees
- 39A.180 – Orders and administrative regulations of political subdivisions – Enforcement
- 39A.190 – Power of arrest for violation of order or administrative regulation
- 39A.200 – Authority to receive services, equipment, supplies, materials, or funds from federal government
- 39A.210 – Qualifications and oath of persons connected with disaster and emergency response organizations
- 39A.220 – Agency emergency operations procedures
- 39A.230 – Procedures for one multirisk, multiagency, unified incident command or management system
- 39A.240 – State Emergency Operations Center – Agency representatives
- 39A.250 – Superseded by KRS 39A. 280, 1998
- 39A.260 – Mutual aid agreements with other states – Workers' compensation
- 39A.270 – Use of publicly owned resources at impending, happening, or response phase of disaster or emergency
- 39A.280 – Nature of disaster and emergency response functions provided by state or local management agency – Immunity, exceptions
- 39A.283 – Short title for KRS 39A.050, 39A.070, 39A.285, and 39A.287
- 39A.285 – Legislative findings
- 39A.287 – Preparedness of Commonwealth to respond to acts of war or terrorism – Annual assessment
- 39A.950 – Emergency Management Assistance Compact
- 39A.990 – Penalty
- Chapter 39B – Local Emergency Management Programs
 - 39B.010 – Local emergency management to be maintained – Unified local emergency management agency

- 39B.020 – Local emergency management director – Joint appointment of a single local emergency management director – Qualifications
- 39B.030 – Powers, authorities, rights, and duties of local director – Development of organizational structure
- 39B.040 – Mutual aid arrangements with special districts and public and private agencies
- 39B.050 – Local disaster and emergency services organization – Membership – Responsibility
- 39B.060 – Emergency operations plan
- 39B.070 – Execution of emergency powers – Emergency operations centers – Waiver of procedures and formalities
- 39B.080 – Powers, duties, rights, privileges, and immunities of employees rendering outside aid
- 39B.090 – Liability for loss or damage to equipment used – Reimbursement of compensation and expenses of employees
- 39B.100 – Contracts permitted
- 39B.990 – Penalty
- Chapter 39C – State Aid to Local Emergency Management Programs
 - 39C.010 – Supplementary state funds
 - 39C.020 – Allocation of state funds
 - 39C.030 – Purpose of supplementary state fund
 - 39C.040 – Director's responsibility – Advisory committee
 - 39C.050 – Criteria for funding local emergency management agencies
 - 39C.060 – Request for financial aid – Review and evaluation criteria
 - 39C.070 – Reimbursement – Claims and equipment purchase
 - 39C.080 – Performance evaluations – Records and reports – Review of program progress and compliance – Correction of deficiencies – Appeal process
 - 39C.090 – Requests for waiver of requirements
 - 39C.100 – Administration of supplementary state funding program – Administrative regulations
 - 39C.110 – Workers' compensation coverage – Limitations
 - 39C.990 – Penalty
- Chapter 39D – Continuity of Government
 - 39D.010 – Temporary seat of state government – Acts valid and binding
 - 39D.020 – Designation of alternate or substitute places for local government – Acts valid and binding
 - 39D.030 – Ordinances and resolutions for continuity of government
 - 39D.040 – Emergency interim successors – Order of successions – Vacancies – Applicability of statute to all special districts and political subdivisions

- 39D.050 – Preservation of essential state public records – Duties of Archives and Records Commission
 - 39D.990 – Penalty
- Chapter 39E – Implementation of Federal Hazardous Materials Programs
 - 39E.010 – Kentucky Emergency Response Commission – Duties
 - 39E.020 – Definitions for chapter
 - 39E.030 – Members – Meetings
 - 39E.040 – Duties – Appointment of committees
 - 39E.050 – Fees – Trust and agency accounts – Administrative regulations
 - 39E.060 – Permissive activities of commission
 - 39E.070 – SARA Title III programs account
 - 39E.080 – Administrative support by Division of Emergency Management – Protection of federal funds – Administrative regulations
 - 39E.090 – Local emergency planning districts
 - 39E.100 – Local planning committees
 - 39E.110 – Committee duties
 - 39E.120 – Commission to be advised of receipt of excess quantities of hazardous substances
 - 39E.130 – Naming of facility representatives – Liaison duties
 - 39E.140 – Political entities required to participate in local planning process
 - 39E.150 – Plan development, approval, and review
 - 39E.160 – Response to be consistent with plan
 - 39E.170 – State agency response
 - 39E.180 – Claims to be filed with Board of Claims
 - 39E.190 – Report of release of substance
 - 39E.200 – Establishment of warning and notification standards
 - 39E.210 – Report of inventories and location of extremely hazardous substances
 - 39E.220 – Additional information may be required
 - 39E.230 – Reports available to public – Protection of trade secrets
 - 39E.240 – Chapter supplemental to other laws
 - 39E.990 – Penalties
- Chapter 39F – Local Rescue Programs – State and Local Search and Rescue Programs
 - 39F.010 – Definitions for chapter
 - 39F.020 – Rescue squads – Formation – Authorization to operate within a jurisdiction – Functions
 - 39F.030 – Regional or statewide specialized rescue services – Alternative affiliations agreement and alternative vehicle and equipment requirements
 - 39F.040 – Specialized squad using search dogs – Requirements – Organization of general rescue squad
 - 39F.050 – Organization of general rescue squad

- 39F.060 – Activities permitted for general and specialized rescue squads
- 39F.070 – Specialized rescue squad – Activities permitted
- 39F.080 – State coordinator for search and rescue – Appointment and duties
- 39F.090 – Coordinating and planning responsibility
- 39F.100 – Rescue Aid Program – Purpose
- 39F.110 – Rescue aid fund – Duties of director of division – Local director's responsibilities
- 39F.120 – Requirements for rescue grant funding – Written standard operating procedures – Bylaws – Rescue vehicle – Membership – Training – Affiliation – Service fee prohibited
- 39F.130 – Rescue and project funding – Application and review process
- 39F.140 – Purchase, disposal, and inspection of equipment – Audit of funds
- 39F.150 – Reports of lost, stolen, or damaged equipment or loss of capability to operate – Quarterly incident and training reports
- 39F.160 – Rescue squad taxing districts
- 39F.170 – Workers' compensation coverage – Limitations – Enrollment.
- 39F.180 – Reports of search and rescue missions – Immediate search for lost, missing, or overdue person permitted
- 39F.190 – Development of comprehensive written search and rescue plan
- 39F.200 – Local search and rescue coordinator
- 39F.210 – Administrative regulations
- 39F.990 – Penalty

Title VI – Financial Administration

- Chapter 48 – Budget
 - 48.150 – Contingency plan

Title IX – Counties, Cities, and Other Local Units

- Chapter 75 – Fire Protection Districts
 - 75.470 – KRS 75.400 to 75.460 not to be construed to conflict with authority of other named agencies
- Chapter 99 – Urban Renewal and Redevelopment
 - 99.530 – Urban renewal projects
 - 99.540 – Urban renewal plan
 - 99.550 – Power and authority of agency with respect to urban renewal

Title XII – Conservation and State Development

- Chapter 147A – Program Development

- 147A.029 – Disbursement of funds for Local Match Participation Program
- Chapter 151 – Geology and Water Sources
 - 151.600 – Public information program for flood plain management and flood hazard mitigation programs

Title XIII – Education

- Chapter 158 – Conduct of Schools – Special Programs
 - 158.070 – School term – Professional development – Holidays and days closed – Continuing education for certain students – Breakfast program
 - 158.163 – Earthquake and tornado emergency procedure system
- Chapter 160 – School Districts
 - 160.599 – Emergency loans to public common school districts

Title XVII – Economic Security and Public Welfare

- Chapter 198B – Housing, Buildings, and Construction – Building Code
 - 198B.050 – Uniform State Building Code

Title XVIII – Public Health

- Chapter 211 – State Health Programs
 - 211.855 – Cabinet's role as radon control agency for Commonwealth
 - 211.856 – Certification of persons engaged in radon analysis, mitigation, or testing - Fees
- Chapter 224 – Environmental Protection
 - 224.16-070 – Water quality certifications for surface coal mining operations for applicants eligible for Nationwide Permit 21 or 26

Title XIX – Public Safety and Morals

- Chapter 227 – Fire Prevention and Protection

Title XXVI – Occupations and Professions

- Chapter 311A – Emergency Medical Services
 - 311A.020 – Powers and duties of board – Executive director and deputy executive director – Persons employed by board

Title XXVIII – Mines and Minerals

- Chapter 350 – Surface Coal Mining
 - 350.570 – Right of cabinet to enter upon land for reclamation purposes – Acquisition and disposal of land by Commonwealth

Kentucky's Pre-disaster mitigation:

Following are revised statutes that specifically pertain to pre-disaster mitigation.

KRS 39. The Division of Emergency Management shall coordinate for the Governor all matters pertaining to the comprehensive emergency management program and disaster and emergency response of the Commonwealth. The division shall be the executive branch agency of state government having primary jurisdiction, responsibility, and authority for the planning and execution of disaster and emergency assessment, mitigation, preparedness, response, and recovery (KRS 39A.050).

KRS 147. Any general fund appropriations made for the Local Match Participation Program may be used for flood control planning and mitigation activities and straight sewage pipe removal and mitigation activities (KRS 147A.029).

KRS 151. The Natural Resources and Environmental Protection Cabinet shall administer KRS 151 and establish the requirements for obtaining a floodplain development permit (KRS 151.250). The water resources authority shall develop a public information program for use by local units of government which will assist them in the development of flood plain management and flood hazard mitigation programs (KRS 151.600).

KRS 158. The board of each local school district, and the governing body of each private and parochial school or school district, shall establish an earthquake and tornado emergency procedure system in every public or private school building in its jurisdiction having a capacity of 50 or more students, or having more than one classroom (KRS 158.163). The earthquake and tornado emergency procedure systems shall include, but not be limited to:

- A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs
- A drop procedure, an activity by which each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows
- A safe area, a designated space including an enclosed area with no windows, a basement or the lowest floor using the interior hallway or rooms, or taking shelter under sturdy furniture
- Protective measures to be taken before, during, and following an earthquake or tornado
- A program to ensure that the students and the certificated and classified staff are aware of, and properly trained in, the earthquake and tornado emergency procedure system

KRS 198B. The Uniform State Building Code (KRS 198B.050) addresses issues concerning seismic and severe wind construction in response to the Commonwealth's potential earthquake and wind threats.

KRS 211. The Cabinet for Health Services shall develop and conduct programs for evaluation and control of activities related to radon including laboratory analyses, mitigation, and measurements (KRS 211.855).

In addition to KRS legislation, the following are other initiatives being undertaken that address state hazard mitigation:

- When purchasing a home located within the boundary of a special flood hazard area (SFHA), the buyer is required to purchase flood insurance.
- Jurisdictions that participate in the National Flood Insurance Program (NFIP) have established ordinances related to floodplain development.

State Hazard Mitigation Capability Matrix

The matrix below identifies the most significant state funded or state administered programs, related regulations or practices with respect to hazard mitigation or loss reduction. Many of the listed programs provide funding for various hazard mitigation activities. Kentucky Revised Statute (KRS) and implementing regulations are cited for state programs in the listings below.

Definitions:

Pre-Disaster-Programs, plans, policies, regulations, funding, or practices that include an evaluation of the state's pre-disaster mitigation measures.

Post-Disaster – Programs, plans, policies, regulations, funding, or practices that include an evaluation of the State's post-disaster mitigation measures.

Affects development in hazard prone areas - Programs, plans, policies, regulations, funding, or practices that includes an evaluation of the State's programs for mitigation measures in hazard prone areas.